

REMARKS

Claims 2-6 remain in the referenced application. Claim 1 has been canceled. Claims 2-6 have been amended. Claims 7 and 8 have been added.

A power of attorney revoking the power of attorney granted to the previous attorneys of record and appointing the undersigned as attorney of record is enclosed herewith.

The drawings have been objected to under 37 C.F.R. §1.84(p)(4) on the basis the numeral 22 in Figure 4 references both the trigger lever and the aerosol spray can. Responsive thereto, Applicant submits a Replacement Sheet in which the correct numeral 12 references the aerosol spray can. In view of the Replacement Sheet, Applicant respectfully requests the withdrawal of the objection to the drawings under 37 C.F.R. §1.84(p)(4).

Claim 1 was objected to on the basis that “said hammer” in line 7 lacks antecedent basis. Applicant respectfully submits the foregoing objection is now moot based upon the cancellation of claim 1.

Claim 1 stands rejected under 35 U.S.C. §102(b) by Smrt (U.S. Patent No. 3,485,206). Responsive to the above-recited rejection, Applicant has canceled claim 1, thereby rendering the rejection of claim 1 moot, and substituted therefor new claim 7. Applicant respectfully submits new claim 7 is patentable over Smrt.

New claim 7 recites a trigger hammer with a first end and a second end, and a can base support that holds the aerosol spray can such that the push-button of the aerosol spray can is located beneath the second end of the trigger hammer. Claim 7 further recites an actuator member, wherein movement of the actuator member pivots the trigger lever such that the second arm of the trigger lever engages the first end of the trigger hammer, and further wherein the trigger lever rotates the trigger hammer such that the second end of the trigger hammer travels

downward and depresses the push-button of the aerosol spray can. Applicant respectfully submits Smrt does not disclose a can base support that holds an aerosol spray can with a push-button located beneath a second end of the trigger hammer as well as a trigger hammer that rotates such that the second end of the trigger hammer travels downward and depresses the push-button of the aerosol spray can.

Smrt discloses a marking device 10 that includes a holder 12 and a spray can 11, which has a valve assembly that is operable by tilting a nozzle 14 sideways so that a marking material is emitted from one end of the nozzle 14. The holder 12 includes a pole 15 having can supports 19 and a hook 18 that hold the spray can 11. An actuator rod 33 attaches to a bell crank 22 which is pivotally mounted to a bar 23 attached to the pole 15. The bell crank 22 attaches to a link 29 including a hooked end 31 that passes around the nozzle 14. Thus, in operation, a user pulls the actuator rod 33 thereby pivoting the bell crank, which, in turn, draws the link 29 horizontally such that the hooked end 31 drags the nozzle 14 sideways to effect a spray of marking material from the nozzle 14.

Smrt accordingly does not read on claim 7 because Smrt discloses that the can supports 19 and the hook 18 hold the spray can 11 such that the hooked end 31 passes around the nozzle 14 and resides adjacent thereto. In fact, it is not possible for the nozzle 14 to reside beneath the hooked end 31 because the port of the nozzle 14 would be blocked. Smrt further does not read on claim 7 because the link 29 and thus the hooked end 31 move sideways to actuate the nozzle 14. In fact, it is not possible for the hooked end 31 to travel downward to depress the nozzle 14 because the nozzle 14 must be pulled sideways and cannot be actuated by depression thereof. Applicant therefore respectfully submits claim 7 is patentable over Smrt because Smrt fails to disclose a can base support that holds an aerosol spray can with a push-button located beneath a

second end of a trigger hammer as well as a trigger hammer that rotates such that the second end of the trigger hammer travels downward to depress the push-button of the aerosol spray can.

Claim 8 recites that a trigger hammer is disposed within a trigger yoke. Smrt conversely discloses a bell crank 22 pivotally mounted to a bar 23 attached to the pole 15. The bell crank 22 is not disposed within the bar 23. Applicant therefore respectfully submits claim 8 is patentable over Smrt.

Claims 2 and 4-6 stand rejected under 35 U.S.C. §103(a) by Smrt (U.S. Patent No. 3,485,206) in view of Hickson (U.S. Patent No. 3,856,209).

Applicant respectfully traverses the above-recited rejection with respect to claim 2. Claim 2 recites an extension pole connectable to the first coupling end of the handle. The Examiner asserts it is obvious to provide the pole 15 of Smrt with an extension as disclosed by Hickson. Applicant respectfully disagrees. The Smrt marking device is for marking sidewalks, streets, soil, grass, and the like. Consequently, a user employs the Smrt marking device for marking objects beneath the user. Adding an extension pole would make this function difficult if not impossible. A user would have to operate the Smrt marking device from a distance or stand on a structure for elevation. There is essentially no reason to extend the pole 15 of the Smrt marking device because such an extension would merely make the use of the Smrt marking device extremely difficult if not impossible. The only reason to extend the pole 15 of the Smrt marking device is to achieve Applicant's invention. Applicant accordingly respectfully submits the combination asserted by the Examiner constitutes an impermissible hindsight reconstruction of Applicant's invention using Applicant's own disclosure. Applicant therefore respectfully submits claim 2 is patentable over the combination of Smrt in view of Hickson.

Applicant respectfully traverses the above-recited rejection with respect to claim 4 based upon the dependency of claim 4 from new claim 7.

Applicant respectfully traverses the above-recited rejection with respect to claim 5. Claim 5 recites a can base support comprising first and second spaced apart resilient arms. Smrt discloses can supports 19 and a hook 18 that hold a spray can 11. The can supports 19 and the hook 18 are not first and second spaced apart resilient arms. Hickson discloses a plurality of expandable loops 30 that hold a spray can 100. The plurality of expandable loops 30 are not first and second spaced apart resilient arms. Applicant accordingly respectfully submits claim 5 is patentable over Smrt in view of Hickson because that combination fails to disclose first and second spaced apart resilient arms.

Applicant respectfully traverses the above-recited rejection with respect to claim 6 based upon the dependency of claim 6 from new claim 7.

Claim 3 stands rejected under 35 U.S.C. §103(a) by Smrt (U.S. Patent No. 3,485,206). Applicant respectfully traverses the above-recited rejection with respect to claim 3 based upon the dependency of claim 3 from new claim 7.

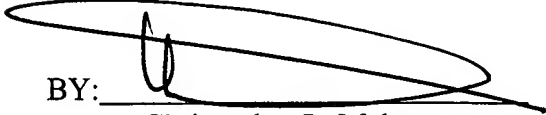
The prior art made of record by the Examiner has been reviewed by Applicant and is deemed not to anticipate nor in any combination render obvious the claimed invention.

In view of the foregoing, Applicant respectfully requests consideration of new claims 7 and 8 and reconsideration of rejected claims 2-6. Applicant further earnestly solicits early allowance of the application.

Respectfully submitted,

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DATE: 13 January 2005

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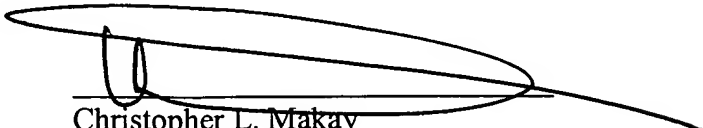
ATTORNEY FOR APPLICANT

CERTIFICATE OF MAILING

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Christopher L. Makay

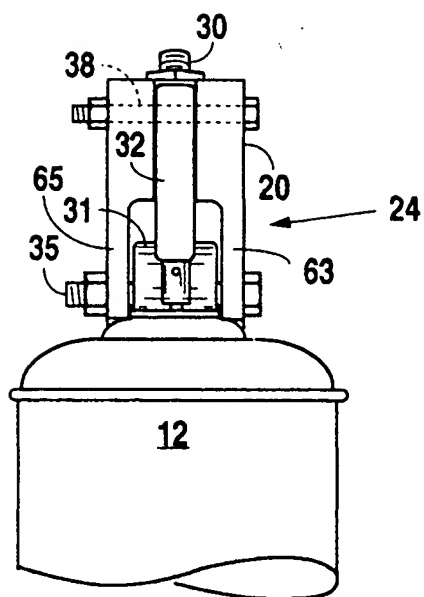


Fig. 3

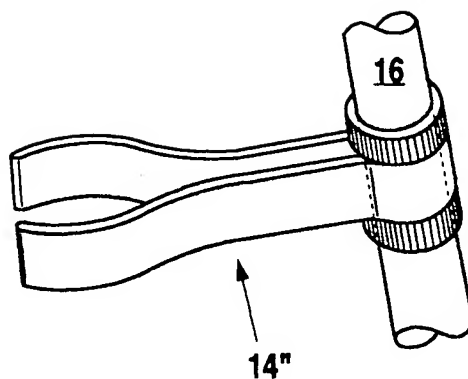


Fig. 4A

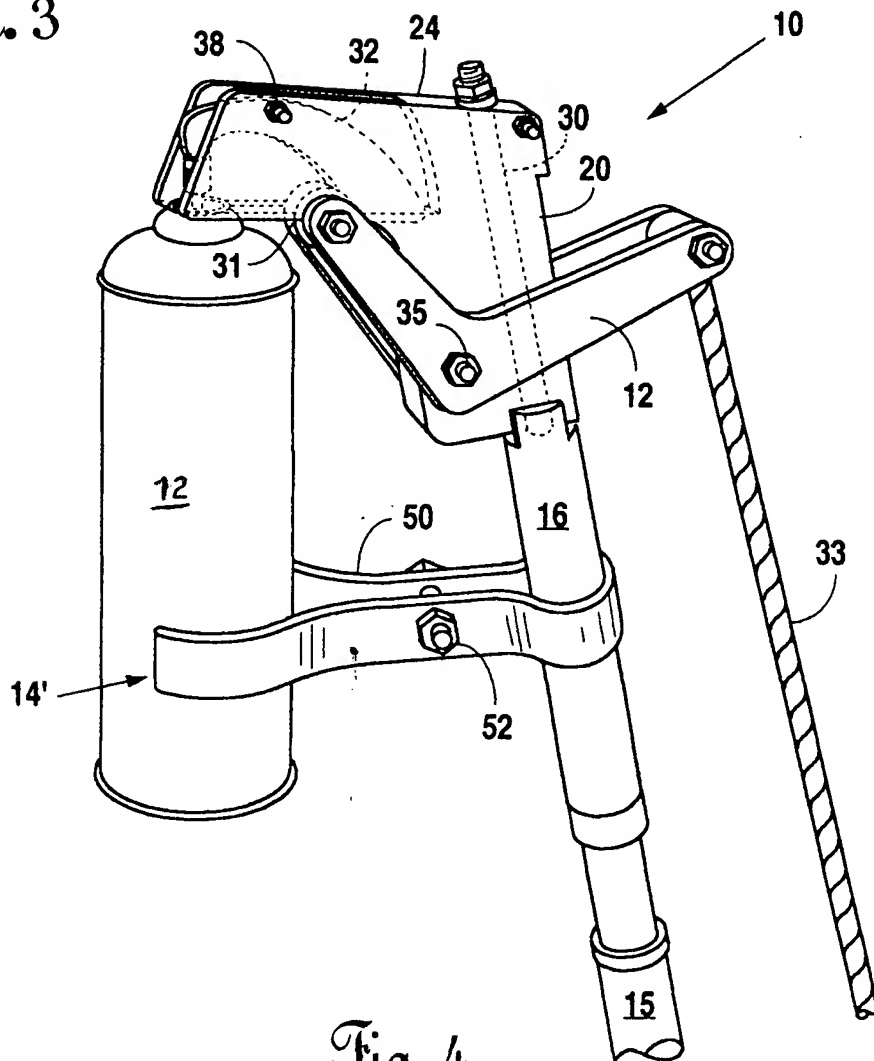


Fig. 4